

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DEMONE CARLINE,		:	
	Plaintiff,	:	
		:	23 Civ. 251 (LGS)
-against-		:	
		:	<u>ORDER</u>
PEPSICO INC., et al.,		:	
	Defendants.	:	
-----X		:	

LORNA G. SCHOFIELD, District Judge:

WHEREAS, this case was filed on November 15, 2022.

WHEREAS, the initial pretrial conference in this matter is scheduled for March 8, 2023.

WHEREAS, the Order dated March 2, 2023, directed the parties to file their joint letter and proposed case management plan only if they had been in communication with Ace, and otherwise directed Plaintiff to file a status letter on his efforts to serve Ace.

WHEREAS, the parties' joint letter was filed on behalf of only Plaintiff and Defendant Pepsico Inc., ("Pepsico") and not on behalf of Defendant Ace American Insurance Company ("Ace"), Plaintiff still has not filed proof of service of Ace or a status letter on his efforts to serve Ace, and Plaintiff's deadline to serve Ace under Rule 4(m) was February 28, 2023;

WHEREAS, in their proposed case management plan, the parties appear to have a dispute about the discovery schedule, in that Pepsico argues that there is no need for discovery in an ERISA case like this one, and Plaintiff seeks a standard discovery schedule.

WHEREAS, no other significant issues were raised in the parties' joint letter or proposed case management plan. It is hereby

ORDERED that the March 8, 2023, initial pretrial conference is **cancelled**. If the parties believe that a conference would nevertheless be useful, they should inform the court immediately

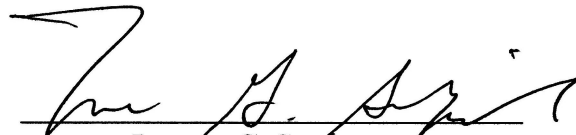
so the conference can be reinstated. The case management plan and scheduling order will issue in a separate order. The parties' attention is particularly directed to the provisions for periodic status letters, and the need for a pre-motion letter to avoid cancellation of the final conference and setting of a trial date. It is further

ORDERED that, by **March 14, 2023**, Plaintiff shall file proof of service of Ace on ECF or file a status letter on his efforts to serve Ace. If Plaintiff fails to file proof of service and fails to show good cause for the failure, the case against Ace will be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 4(m). It is hereby

ORDERED that, by **March 21, 2023**, the parties shall file a further joint letter. If the parties agree that the only discovery required is the administrative record and related documents (such as Plaintiff's personnel file), the parties shall either state that all discovery is complete or propose a date by which discovery will be complete and shall propose a briefing schedule for Defendant's proposed motion for summary judgment. If Plaintiff maintains that further discovery is appropriate, the parties' joint letter shall set forth their respective positions on that question, with each party's section not to exceed three pages. It is further

ORDERED that, by **March 8, 2023, at noon**, Defendant Pepsico shall serve a copy of this Order on Plaintiff's counsel by email and file proof of service on the docket.

Dated: March 7, 2023
New York, New York


LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE